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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,595	01/30/2001	Peter Hossel	51186	8957
26474	7590	07/28/2009	EXAMINER	
NOVAK DRUCE DELUCA + QUIGG LLP			SOROUSH, LAYLA	
1300 EYE STREET NW				
SUITE 1000 WEST TOWER			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20005			1617	
			MAIL DATE	DELIVERY MODE
			07/28/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/771,595	HOSSEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LAYLA SOROUSH	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 January 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4, 10-14 and 16-26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 10-14 and 16-26 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

The response filed January 1, 2009 presents remarks and arguments submitted to the office action mailed September 17, 2008 is acknowledged.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-4, 10-14 and 16-26 over Dieing et al. (EP 0 893 117, translation) in view of either Yamada et al. (US 6936241 B2) or Eteve et al. (US 5,643,557) are persuasive. Therefore, the rejection of record is herewith withdrawn.

The following new rejections are made of record:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 10-14 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dieing et al. (EP 0 893 117, translation) in view of Tanner et al. (US Pat 5,827,508) and Boussouira et al. (US 6103247 A).

Dieing et al. teach cationic crosslinked polymers for use in cosmetic compositions said polymers comprising 1-99.99% of a cationic or quaternized monomer such as 3-methyl-1-vinylimidazolium methyl sulfate and 0-98.99% of a water-soluble monomer such as N-vinylpyrrolidone. See Translation at pp. 4-6. N,N'-divinylethylenurea can be used as a crosslinking agent. See Translation at p. 5; p. 7;

Example 3. The polymers of Dieing et al. are obtained by the same method of free-radical initiated solution polymerization as recited in the instant claims. See Translation at p. 5. Dieing et al. teaches that along with the polymers and solvents, the cosmetic hair preparations can also contain conventional cosmetic ingredients. See Translation at p. 6. With respect to Claims 24 and 25, the compositions of Dieing et al. contain 0.01-5% of the cationic crosslinked polymer, which is within the claimed range. See p.7.

Dieing et al. do not explicitly teach the UV filters (b) of the instant claims.

However, Tanner et al. teach an especially preferred uv protectant used herein is Z-Cote HP1, hydrophobic microfine zinc oxide(dimethicone treated) compounds. Tanner et al. teaches to provide improved “photoprotection compositions is to incorporate physical sunblocks, i.e. inorganic compounds such as zinc oxide (col 1 lines 16-32).” The amount of zinc oxide is 0.1% to 50% of the composition (col 6 lines 60-62). The composition may comprise additional sunscreen agents (col 9 line 45).

Boussouira et al. is solely used to show zinc oxides are also useful in hair care products.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hair care compositions of Dieing et al. such that to employ inorganic UV filters of Tanner et al. One having ordinary skill in the art would have been motivated to do this to obtain compositions that would protect hair and/or skin from UV radiation. Hence, a skilled artisan would have had reasonable expectation of successfully producing a composition with similar efficacy and results. With respect to

Claim 17 and Claim 20, when the compositions of Dieing et al. and Boussouira et al. are applied to hair, they are applied to the skin (scalp).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

***Response to Arguments***

Applicant's arguments filed on January 9, 2009 have been considered.

Applicant's argument with respect to the Yamada et al. and Eteve et al. references have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617